

EXHIBIT D

Special Master's Hearing August 8, 2014

*** Telephonic ***

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1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3
4
5 DANIEL SMALL, CAROLYN SMALL,)
WILLIAM CURTIN, DAVID COHEN,)
6 LANETTE LAWRENCE, and LOUISE)
COLLARD, Individually, and on)
7 Behalf of All Other Persons)
Similarly Situated,)
8)
Plaintiff,)
9) Case No.
vs.) 2:13-cv-0298-APG-PAL
10)
UNIVERSITY MEDICAL CENTER OF)
11 SOUTHERN NEVADA,)
12 Defendant.)
13)

CERTIFIED
COPY

14 REPORTER'S TRANSCRIPT OF SPECIAL MASTER'S HEARING

15 HEARD TELEPHONICALLY

16 BEFORE SPECIAL MASTER PRESIDING, DANIEL GARRIE, ESQ.

17 Taken on Friday, August 8, 2014

18 At 10:07 a.m.

19 Taken at the Law Offices of:

20 Lewis Brisbois Bisgaard & Smith, LLP

21 6385 South Rainbow Boulevard, Suite 600

22 Las Vegas, Nevada

23
24
25 Reported By: Gale Salerno, RMR, CCR No. 542

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Also Present: (Present Telephonically)

DOUGLAS E. FORREST, ESQ., ILS

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1 site, extract the data from -- well, go on-site and
2 become -- I mean, this is where I get lost. I don't
3 understand how a vendor can go on-site and become
4 competent in under 40 hours on four systems and
5 perform the collection if they don't actually know
6 how the systems work.

7 So the whole problem we have right now
8 before us is that we can't actually identify anybody
9 at UMC that has knowledge as to how the systems
10 actually work.

11 MS. WITTY: This is Counsel Witty. I
12 think, and I apologize, this was an abbreviated
13 process drawn up rather quickly. Obviously, the
14 vendor has not been able to be on-site and be able to
15 further investigate.

16 I think that the expectation was that they
17 would have in-house expertise as to how these systems
18 work. We just haven't had a chance to get into all
19 those details.

20 As I mentioned, the process for retaining a
21 vendor is complicated due to the status of our client
22 as a public entity and the approval process there.
23 We are waiting for that approval before we move ahead
24 and incur any costs.

25 SPECIAL MASTER GARRIE: I think before we

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1 go ahead with the vendor, it would be useful for the
2 vendor to submit to us, submit to these proceedings,
3 qualifications that they are, indeed, competent in
4 these systems before we go down the path and spend
5 resources on it.

6 What I will order is UMC to find a vendor
7 that is competent in all four of these systems,
8 sufficient that they are able and asked to have a
9 conversation with the plaintiffs' IT individuals, and
10 dialogue about this is what these systems capture,
11 this is what we are able to extract. And provide the
12 basic who, what, when, where sort of criteria that
13 would allow Plaintiffs then to come back with a
14 reasonable understanding of what these systems have.
15 Unless -- you mentioned -- the reason I mentioned
16 this is you said you would like to make sure that the
17 plaintiffs' ESI vendors are involved.

18 The only concern I have here is ensuring
19 that (a) UMC actually knows what the systems are
20 capturing, (b) that they can properly inform counsel
21 for UMC that this is, indeed, what they are capturing
22 and what they have captured and what we can provide
23 you.

24 And then counsel for UMC is able to make
25 these representations to Plaintiffs. And there could

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1 be a conversation about what information is to be,
2 you know, and then UMC obviously will produce the
3 responsive ESI obviously for all the members of the
4 Plaintiffs, that ESI and these systems as it relates
5 to the issues, underlying issues, is responsive and
6 should be produced. Those are my high level
7 thoughts.

8 Does Plaintiffs have any -- Mr. Forrest or
9 Plaintiffs have any comments or thoughts?

10 MR. FORREST: This is Mr. Forrest. The
11 only comment that I would have is as long as
12 appropriate expertise can be provided. It may be the
13 case that such expertise is not within a single
14 vendor, and there may have to be different vendors
15 for one or more of the different systems.

16 SPECIAL MASTER GARRIE: Yeah, I would defer
17 to UMC to provide their vendor's credentials
18 sufficient to provide demonstrative evidence that
19 they are, indeed, competent to produce and extract
20 data from these systems.

21 MR. GODINO: This is Counsel Godino. Maybe
22 a solution in part would be if UMC could get a
23 representative for each of the four systems. You
24 know, from Clarity, from CrimeStar, from Teletracking
25 and from Grasp, to be a point person from those

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1 softwares that could come in and talk the tech talk
2 that we need to get this done.

3 MS. WITTY: This is Counsel Witty. I
4 appreciate that, Counsel Godino, because that is
5 actually the full intention to start there.

6 SPECIAL MASTER GARRIE: I would point out
7 that nobody at UMC actually knows, so there's not a
8 whole lot of -- this is the complicated part that we
9 face in this particular matter.

10 MS. WITTY: Special Master Garrie, though,
11 I think what Mr. Godino was saying was not
12 necessarily a point person within UMC, but a point
13 person for the software --

14 SPECIAL MASTER GARRIE: I understand,
15 Counsel.

16 MS. WITTY: -- we can work with someone
17 from Teletracking, someone from CrimeStar, someone
18 from CA.

19 SPECIAL MASTER GARRIE: Counsel for UMC, I
20 understand what was said. My point was different.

21 And to finish, the point is as follows:
22 UMC actually doesn't know with confidence how these
23 systems are actually used or configured, so it would
24 require more than just having a point person to talk
25 to. They're going to have to actually come in and

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1 look at the systems before they can actually start
2 talking. That was all I wanted to state.

3 I do think that Mr. Godino -- and as you
4 agreed -- suggestion makes a lot of sense, to
5 identify representatives. But the first test that
6 needs to happen is find the representative and then
7 have him come look at how UMC is actually using and
8 configured the systems.

9 MR. GODINO: This is Counsel Godino.
10 Exactly.

11 SPECIAL MASTER GARRIE: Then you can have a
12 conversation.

13 What would be the objective of the
14 conversation, counsel for UMC, in your mind?

15 MS. WITTY: This is Counsel Witty. I don't
16 know what conversation you're talking about. I don't
17 know if you're talking about our vendor talking with
18 the software. I don't know if you're talking about
19 our vendor talking with our users.

20 SPECIAL MASTER GARRIE: I apologize. Let
21 me be clear. Step one is an expert for each one of
22 the four timekeeping systems would be identified from
23 the vendor's side. Okay?

24 Next, once that is completed, the parties
25 will -- I lost my notes. One second. Once the

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1 experts have been identified and has had a chance to
2 go on-site and establish how UMC uses its system,
3 that said expert will then -- could then talk to
4 Plaintiffs' expert and explain how UMC uses the
5 systems.

6 Because it is possible, I believe, that it
7 might not be necessary to have the data from each of
8 these systems. Based on what I've read, it might
9 not actually be -- once we actually understand how
10 each system is used, it might turn out that it's
11 not necessary to have data from each of these
12 systems.

13 Does that make sense, counsel for
14 Plaintiffs?

15 MR. TOSTRUD: This is Counsel Tostrud. As
16 I think I expressed in my e-mail on this topic, our
17 view is that it's been established that all four of
18 the systems do contain relevant information. We
19 would ask that all four be produced.

20 But if in the process, if in the process
21 of going through this analysis with each of the
22 respective software provider's representatives we
23 learn something else, we're certainly willing to,
24 you know, adjust. But right now, it's been
25 demonstrated that they're all relevant and should be

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1 produced.

2 SPECIAL MASTER GARRIE: Okay. So with that
3 in mind, step three, counsel for UMC, said experts
4 will talk to Plaintiffs' experts, and explain how UMC
5 uses its system as it relates to -- and after
6 speaking with counsel for UMC -- but as it relates to
7 this litigation.

8 The result of that conversation will be
9 basically an understanding between the parties, the
10 data that is to be produced. The data set to be
11 produced that is, indeed, responsive, because we're
12 not exactly sure what data has been captured.

13 Once that's been identified, then the UMC
14 ESI vendor can work with either I guess whomever
15 at -- I think you called the system administrator
16 or -- was it UMC system administrator? To extract
17 the data, and/or generate the reports, depending on
18 what we learn. And then counsel provide to counsel
19 for UMC for review, and then produce it.

20 And that's what I was referring to, Counsel
21 Witty. Does that make sense?

22 MS. WITTY: This is Counsel Witty. Yes.

23 SPECIAL MASTER GARRIE: Would that be
24 acceptable to UMC?

25 MS. WITTY: This is Counsel Witty. My

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1 concern -- and I appreciate Mr. Forrest's perspective
2 on this. But asking for an expert in each of these
3 systems could be a very time consuming and expensive
4 endeavor, where we would have the opportunity to work
5 with someone who might be able to work with this
6 system in coordination with the vendor.

7 I'm concerned that if we spend our time
8 looking for an expert in each of these systems, that
9 it will prolong this production.

10 SPECIAL MASTER GARRIE: Well, actually what
11 I say was that -- I think Mr. Godino suggested what I
12 thought was reasonable, was that you would contact a
13 vendor, and a representative from each of the vendors
14 would basically come on-site for a day or two, or
15 whatever is necessary, to establish how UMC uses this
16 system, how they've been configured.

17 If you're saying that the -- at some
18 point -- and I understand and appreciate UMC's
19 perspective, but UMC must understand how it uses the
20 system and how the system is configured before it can
21 do anything.

22 If the ESI vendor does not have the
23 technical expertise for a particular system, it won't
24 prove to be productive or fruitful.

25 MS. WITTY: This is Counsel Witty. But if

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1 the vendor can work with the software vendor to gain
2 that technical knowledge -- I just don't want to have
3 to go out and find an expert on Clarity, an expert on
4 CrimeStar, an expert on Teletracking, an expert on
5 Grasp, to then work with my vendor and to work with
6 the software company so that...

7 MR. TOSTRUD: This is Counsel Tostrud.
8 And I understand Counsel Witty indicated that UMC
9 has active contracts with at least three of the four
10 software program providers. I'm speculating, but
11 it's my guess that there is an option in the
12 contract to contact a vendor for support and
13 assistance.

14 So I wonder if you can go back to the
15 contract and just see with at least three of those
16 systems if the ability to reach out to the provider
17 and get assistance and support already exists?

18 SPECIAL MASTER GARRIE: And let me be
19 clear, counsel for UMC. UMC needs to, whether it be
20 through the vendor, they need to have somebody that
21 has demonstrated competency and understanding of
22 these systems. And we're just trying to identify
23 how to find that individual in the most timely
24 manner.

25 You can't have your ESI vendor go to UMC

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1 and get training and knowledge on this system when
2 nobody at UMC actually has that knowledge.

3 MS. WITTY: This is Counsel Witty. I fully
4 understand that aspect of it. I just want to make
5 sure that I don't have to meet an arbitrary
6 requirement of having someone assigned as an expert,
7 that the idea is as long as we have the knowledge of
8 how the system is configured at UMC, we can move
9 forward.

10 SPECIAL MASTER GARRIE: Okay. So in order
11 to -- yes. But in order to figure out how the system
12 is configured, the ESI vendor is not that person.

13 MS. WITTY: Right. It requires someone
14 with knowledge of the system itself. I completely
15 understand that.

16 SPECIAL MASTER GARRIE: And that person
17 theoretically has to be an expert in the system. I
18 mean, I don't understand. Like, I would assume that
19 they have a support contract and somebody could come
20 out, or they have on-site vendors or somebody that
21 could come out that --

22 MS. WITTY: Yes, Special Master Garrie. I
23 think it was more a semantics argument, and I
24 apologize, I wanted to make sure that was clear.
25 Because initially the way I heard it was we were

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1 being required to hire four experts for these
2 systems.

3 I think that we have established from the
4 record now that what we are looking at is making sure
5 that we have expertise in the system to determine the
6 configuration, to make sure that we have someone who
7 can work with our vendors to make sure the
8 information we're getting out is what is needed.

9 MS. FOLEY: And this is Counsel Foley.
10 Just to clarify that that person can at least
11 initially be the software vendor liaison with UMC
12 to coordinate with defense counsel's ESI vendor.
13 Yes?

14 SPECIAL MASTER GARRIE: Well, yes, but I
15 need to offer further clarity.

16 MS. FOLEY: Please do. Thanks.

17 SPECIAL MASTER GARRIE: Before the ESI
18 vendor is appointed and used, UMC -- and I think this
19 needs -- it's not a matter of a point of contact on a
20 contract. Someone needs to come out to UMC or
21 remotely log in, outside of Teletracker, which
22 actually supports the entire system, so it should be
23 a fairly trivial process.

24 But for CrimeStar, for instance, there
25 needs to be an individual from CrimeStar or a third

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1 party who calls in in Vegas, or whomever they use or
2 recommend, that comes out and looks at how UMC has
3 configured CrimeStar to determine whether auto
4 capturing time or -- I mean, it appears that it logs
5 lunch breaks, how it logs them, et cetera, et cetera,
6 to understand all of those technical pieces of
7 information, and that person that is coming has to be
8 a very competent and skilled user with CrimeStar.

9 Once they have that knowledge for UMC,
10 then the ESI vendor is more than able, I'm sure, to
11 work with that individual to get that information
12 out.

13 But we need to know what information is
14 there first. Is that clear? That's my concern.

15 MS. FOLEY: This is Counsel Foley. It's
16 clearer. But I just want to confirm that the person
17 you're talking about with the software knowledge from
18 Sodexo, or whatever, is that someone actually who is
19 part of the UMC contract support that can do that?
20 Or does that need to be some other third party
21 unconnected?

22 SPECIAL MASTER GARRIE: I'm not privy to
23 the support contract.

24 MS. FOLEY: Okay.

25 SPECIAL MASTER GARRIE: So I don't care how

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1 UMC finds the person, but that person has to have
2 sufficient technical competence and skill.

3 MS. FOLEY: Okay. But if the person does
4 have the technical skill and is, in fact, UMC's
5 Sodexo vendor person, that person would be
6 acceptable?

7 SPECIAL MASTER GARRIE: That's fine.

8 MS. FOLEY: Thank you.

9 SPECIAL MASTER GARRIE: Anybody is
10 acceptable that can establish -- I would assume the
11 Plaintiffs, given all the history and issues we've
12 had here, that it would be very useful and
13 constructive that UMC can make those individuals
14 available or circulate their CVs, or some way to
15 establish or validate to all parties so we don't have
16 to repeat this. That whoever is coming on-site to
17 figure out how the systems are actually working at
18 UMC knows what they're doing.

19 Now, if it's the third-party contracts or
20 trading Hershey bars, I don't care.

21 MS. FOLEY: Thank you for clarifying. Now
22 I understand.

23 SPECIAL MASTER GARRIE: Okay. But the
24 point is before UMC works with the ESI vendor, they
25 need to be able to explain to the ESI vendor how

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1 those systems are technically configured. So then
2 the ESI vendor can then figure out how to get the
3 data out. Does that make sense?

4 MS. FOLEY: This is Counsel Foley. It does
5 make sense.

6 And just while we're having the
7 conversation, throwing it out there, Special Master,
8 you had mentioned you might want to vet the ESI
9 vendor by talking to them yourself. Do you believe
10 that this other process needs to take place first
11 before you do that?

12 SPECIAL MASTER GARRIE: I mean, in the
13 interest of efficiency, it probably makes more sense
14 to make sure we find the individuals before we
15 start -- I mean, I can vet the -- I'll certainly
16 welcome a quick 15 to 30-minute conversation with the
17 vendor to determine if they have the competency.

18 But I assume that if the vendor works on
19 any sort of big platform -- and I've actually heard
20 of this vendor -- that it should be a fairly easy
21 process once UMC is able to explain how they use the
22 system and how they're configured so they can
23 properly get the data out without damaging it.

24 MS. FOLEY: Thank you. I appreciate that
25 clarification.

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1 Is it possible that UMC can get back to
2 you about whether it makes sense to have you talk
3 to the vendor at an earlier point or at a later
4 point?

5 SPECIAL MASTER GARRIE: I'm going to set
6 timelines.

7 MS. FOLEY: Right. But just for vetting
8 for your comfort. Because it sounds like you could
9 theoretically talk to this vendor, and that that
10 might allay some of your concerns that you've set out
11 here, based on the e-mail, which would then advance
12 the ball in a way.

13 SPECIAL MASTER GARRIE: Yeah. I mean, I
14 don't believe the vendor will have specific -- I know
15 they have New-X expertise, and I know they have like
16 Kcura and Relativity expertise. All I need to know
17 is that the vendor knows how to extract data from a
18 database even when they're giving it, so I would
19 welcome the conversation.

20 MS. FOLEY: This is Counsel Foley. Thank
21 you.

22 SPECIAL MASTER GARRIE: Counsel for
23 Plaintiffs, does that sound like an acceptable
24 proposal?

25 MR. TOSTRUD: This is Counsel Tostrud. It

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1 does. The only question I have is Counsel Witty
2 indicated that there was a contract approval process
3 that may take some time, and I'm wondering if she
4 could flush that out for us.

5 SPECIAL MASTER GARRIE: Before counsel for
6 UMC answers that, I think we have more or less a
7 process that I can put into an order that we can all
8 follow now with regards to timing as I just pointed
9 out.

10 What are the time constraints from UMC's
11 side to identify this individual? Once you identify
12 the individual, you know, they should be able to come
13 on-site fairly quickly or promptly. And once they
14 garner that information, everything should flow from
15 there.

16 So counsel for UMC?

17 MS. WITTY: This is Counsel Witty. I
18 apologize. I do not have a specific timeline. My
19 concern was that I did not want an immediate
20 requirement to move without approval from UMC.

21 We don't expect that there will be a, you
22 know, a week-long process for approval of the vendor.
23 There is certain information, obviously, we need to
24 provide to UMC, which we can do.

25 SPECIAL MASTER GARRIE: I'm not worried

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1 about the ESI vendor. I'm worried about the other
2 vendors.

3 My bigger concern has nothing to do with
4 the ESI vendor. My concern has to do with UMC's
5 ability to get the four experts on the systems to
6 figure out how they're actually operating.

7 MS. WITTY: This is Counsel Witty. With
8 regard to those actual vendor support contracts,
9 we've actually already identified a point person for
10 three of those, for the three systems.

11 The issue is Clarity. There is no longer a
12 support system for Clarity, and so we will probably
13 have to engage a third-party expert on that system to
14 come in and look at the configuration.

15 SPECIAL MASTER GARRIE: When you say you
16 looked at the support -- you've identified a point
17 person, is that a technical point person or a project
18 manager?

19 MS. WITTY: A technical point person, yes.

20 SPECIAL MASTER GARRIE: And what sort of
21 timing would they become available to come on-site to
22 do the -- to figure out how UMC is actually using the
23 system?

24 MS. WITTY: This is Counsel Witty. I'm
25 hesitant to answer that, because I cannot account for

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1 their schedules. But I don't think that it would be
2 a large concern for them to come down and provide
3 that information.

4 I would also enter the caveat, again, that
5 we will need -- as Special Master noted, you're not
6 privy to those support contracts, and so we will need
7 to make sure that we do have review of those support
8 contracts to make sure that this is a part of that.
9 If there is any additional expense, it is something
10 that, again, will require administrative approval.

11 SPECIAL MASTER GARRIE: I'm going to give
12 UMC until Monday -- or Tuesday to figure out if
13 there's a review of the support contract and figure
14 out what the story is by midday Tuesday for all four
15 vendors and provide a timeline for when they can meet
16 and production -- a meet and production being meet
17 and be able to be on-site.

18 I'm going to issue an order. I'm going to
19 make it based on the number of dates after UMC is
20 able to find that individual to be on-site. Okay?

21 MS. WITTY: This is Counsel Witty. I
22 understand. Thank you, Special Master.

23 SPECIAL MASTER GARRIE: Counsel for
24 Plaintiffs, is that acceptable to you?

25 MR. TOSTRUD: Counsel Tostrud. That's

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1 acceptable.

2 SPECIAL MASTER GARRIE: Okay. And also,
3 whoever they identify as the technical point person,
4 I would request on Tuesday that UMC provide the CV or
5 credentials of the individual person so we are sure
6 that we are all comfortable with them.

7 And then from there, I will, as I mentioned
8 before, put in my order, this protocol and specify a
9 number of days under which I expect everything to
10 happen.

11 And with that in mind, I request that UMC
12 set up a call with me, Mr. Forrest, Mr. Pixley, for
13 Wednesday with the ESI vendor.

14 MS. FOLEY: This is Counsel Foley. Any
15 particular time on Wednesday, Special Master?

16 SPECIAL MASTER GARRIE: Let's say 9:00
17 o'clock. 9:00 a.m.

18 MS. FOLEY: Okay. We'll try and make it
19 happen for then.

20 Is the rest of the day any option if
21 needed?

22 SPECIAL MASTER GARRIE: 10:00 o'clock,
23 maybe.

24 MS. FOLEY: Okay.

25 SPECIAL MASTER GARRIE: All right. I

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REPORTER'S CERTIFICATION

I, GALE SALERNO, a certified court reporter and notary public within and for the State of Nevada, do hereby certify that I reported in shorthand the proceedings in the above-entitled matter at the time and place indicated, and that thereafter said shorthand notes were transcribed into typewriting at and under my direction, and the foregoing transcript constitutes a full, true, and accurate record of the proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of August, 2014.


GALE SALERNO, RMR, CCR No. 542